IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1755 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

MANIBEN TRIKAMBHAI

Versus

MANHERGAURI KRISHNALAL KAJI, DECD,THRO: HER HEIRS & L.R.

Appearance:

MR PB MAJMUDAR for Petitioners

MR UNMESH D SHUKLA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/08/98

ORAL JUDGEMENT

This is tenants revision under section 29(2) of the Bombay Rent Act, 1947.

The brief facts giving rise to this revision are that one Trikambhai was the tenant of the respondent in the disputed premises on monthly rent of Rs.7/-. The rent was enhanced at intervals to Rs.8.75 to Rs.9/- and

lastly to Rs.10.50 p.m. Thereafter, it was reduced to Rs.9.50 p.m. in the year 1967. It was alleged that the rent from 1.4.1973 to 31.1.1974 was due. The revisionists are legal representatives of the deceased tenant Trikambhai. Notice of demand dated 18.2.1974 was served on the tenant on 20.2.1974. The notice remained uncomplied with. No rent was paid in compliance of this notice. Though the tenancy was determined by this notice possession of the premises was also not handed over to the landlord. Accordingly, the suit for eviction recovery of arrears of rent, damages and mesne profits was filed.

The suit was resisted on the ground that it was not a case of wilful default. The delay occurred on account of illness from which the tenant was suffering.

The Trial Court found that the case was covered by section 12(3)(a) of the Bombay Rent Act in as much as no dispute regarding standard rent was raised at the earliest opportunity by sending reply notice. On the other hand neither reply notice was given by the tenant nor the dispute of standard rent was raised. The decree for eviction was therefore passed.

The matter was taken up in appeal. The appeal was also dismissed. Hence this revision.

Learned Counsel for the revisionists raised three points to assail the judgments of the two Courts below. The first contention has been that the notice of demand is invalid in as much as there is no specific and clear demand from the tenant about the arrears of rent. Exhibit 19 is the notice. The Trial Court in its judgment has held that from para 3 of the notice implied demand of rent can be inferred. This observation was patently incorrect. It is true that validity of notice of demand was not challenged in the written statement, but since an issue was framed on this point viz. issue no.5, the parties fully knew that they have to meet their respective cases regarding validity and invalidity of the notice of demand. Since the Trial Court has already held notice to be valid so also the Appellate Court it has to be seen whether the notice of demand is valid or not.

For interpreting the notice, a liberal view is to be taken and on mere technicalities and nicities notice is not to be struck down as invalid. In para 3 of exhibit 19 a sum of Rs.95/- has been demanded. This is obviously exceeding six months rent. The rent was due

since 1.4.1973 to 31.1.1974. If the amount of arrears was quantified and made specific the tenant cannot be permitted to say that he was unaware as to how much amount is to be paid to the landlord.

So far as specific demand of rent is concerned it is clear from section 12 (2) of the Bombay Rent Act that the landlord has to make demand of arrears of rent from the tenant.

Para 4 of the notice however makes specific demand of rent. In this para composite demand of delivery of vacant possession and arrears of rent as mentioned aforesaid viz. in para 3 of the notice was made. There is thus specific demand of arrears of rent in para 4 of the notice. By no stretch of imagination it can be held to be vague demand. I, therefore, do not find any force in the contention that the notice of demand is invalid.

The next contention of the learned Counsel for the revisionists has been that the case is not covered by section 12(3)(a) of the Act. The Trial Court has passed the decree under this section on the ground that the agreed rent of Rs.9.50 p.m. was also the standard rent and since the rent at this rate fell due from 1.4.1973 to 31.1.1974 and the same remained unpaid within a month of service of notice dated 18.2.1974, the tenant was liable to be evicted. It was also pointed out that no reply to the notice was given nor any dispute regarding standard rent was raised. The dispute about standard rent was raised for the first time in the written statement and the Trial Court fixed Rs.9.50 p.m., which is agreed rent, to be the standard rent also. In view of this the Trial Court was justified in holding that the decree for eviction could be passed under section 12(3)(a) of the Act.

Learned Counsel for the revisionists however contended that it was not a case of monthly tenancy but yearly tenancy in as much as it is clear that there was enhancement of rent by rupee 1/- p.m. which was to be paid by the tenant on account of construction of flush latrine in the locality. His contention has been that this tax has to be paid by the tenant and as such under section 12(3)(a) the rent was not payable monthly and it became yearly tenancy hence the case comes out of the purview of section 12(3)(a) of the Act. I again do not find force in this contention. It was a case of monthly tenancy. The lease was granted in the nature of monthly tenancy. Merely because the mode of payment of rent is

not monthly the nature of tenancy will not be changed into yearly tenancy. An yearly tenancy cannot be created except through registered instrument. There is no registered instrument in this case. Moreover Re.1/- was enhanced on account of construction of flush latrine. Consequently the rent was enhanced by the landlord. Agreed rent was again reduced to Rs.9.50 p.m. and this included the said enhancement of Re.1/- also.

In case where the rent is inclusive of tax section 12(3)(a) will apply. It is not a case where tax was payable in addition to the rent. Consequently the rent remained payable monthly and nature of tenancy was also monthly and not yearly. As such section 12(3)(a) was rightly applied by the Courts below.

The last contention of the learned Counsel for the revisionists has been that the tenant is entitled to the protection of section 12(3)(b) of the Act. This contention is also without force for the obvious reason that if the case is covered under section 12(3)(a) of the Act, the Courts below had no option but to grant decree for possession, hence section 12(3)(b) would not come to the benefit of the tenant.

Learned Counsel for the revisionists however requests that the tenant may be permitted some reasonable time to vacate the premises. His request is for two years time which is quite unreasonable because the revision itself was filed in the year 1980 and the tenants have remained in occupation in the garb of this revision for a period of 18 years. Six months time is reasonable to enable the revisionists to vacate the accommodation.

In the result, the revision is dismissed. The parties shall bear their own costs. The revisionists are directed to vacate and hand over possession within a period of six months from today on the condition that they shall file usual undertaking within a period of three weeks in this Court.

Sd/-
(D.C.Srivastava, J.)

m.m.bhatt